UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES

CROMPTON CORPORATION

and Case No. 6-CA-33043

DISTRICT LODGE 83, LOCAL LODGE 2430, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

Suzanne C. Bernett, Esq., for the General Counsel.

James Rapp, of Parker, Pennsylvania, for the Charging Party.

Hayes C. Stover, Esq. (Kirkpatrick & Lockhart, LLP), of Pittsburgh, Pennsylvania, for Respondent.

DECISION

Findings of Fact and Conclusions of Law

Benjamin Schlesinger, Administrative Law Judge. The parties stipulated that: "For many years, . . . [Respondent Crompton Corporation] had a consistent practice of paying bargaining unit employees a minimum for four hours of call out pay for scheduled work on a sixth day in any workweek, irrespective of the time actually worked by the unit employees." The complaint in this proceeding alleges that Respondent changed that past practice. Respondent denies that it violated the Act in any manner. This case was tried in Pittsburgh, Pennsylvania, on April 3, 2003. The charge was filed by District Lodge 83, Local Lodge 2430, International Association of Machinists and Aerospace Workers, AFL-CIO (Union) on November 4, 2002, and amended on January 27, 2003; and the complaint was issued on January 30, 2003.

Respondent, a corporation with an office and place of business in Petrolia, Pennsylvania, manufactures petroleum products. During the year ended October 31, 2002,¹ Respondent purchased and received at its Petrolia facility goods valued in excess of \$50,000 directly from points outside of Pennsylvania. I conclude that Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, which has represented Respondent's 100 or so production and maintenance employees for 32 years, is a labor organization within the meaning of Section 2(5) of the Act.

¹ All dates are in 2002 unless otherwise indicated.

The pertinent section (Article V, paragraph 31) of the parties' current collective-bargaining agreement, dated April 26, 2002, provides:

Any employee who has left the Company's premises and who is called back to work after the end of his/her shift shall receive not less than four (4) hours pay at the rate of time and one-half. Any employee on call-out on his/her second day off shall receive double time rate per hour after working three (3) hours. Any employee called back to perform emergency work shall be required to perform only that work for which the employee was called back or other emergency work that develops while the employee is still at the plant.

In late May, Respondent decided to combine three positions, laboratory tester, sample room attendant, and bottle washer, into a new position of technical associate in the laboratory. On May 23 and June 4, James Rapp, president of the Local Lodge, met with members of management about the new position. According to Rapp, they notified the Union that they were creating the new position and abolishing the old, which Rapp conceded that they had the right to do. The Union did not object. They discussed retraining the new employees and that the current incumbents had first opportunity to bid on those positions within the department. They discussed vacations and that the technical associates would work overtime to be retrained in the new position. Rapp specifically denied that management had mentioned to him or that there had been any discussion about the fact that, as a result of the combination of the jobs, there would be more work or the same amount of work for fewer people and that that would necessitate the working of overtime.

On June 20, the technical associates working the daylight shift held their regular weekly team meeting with their supervisor, Jill Troutman, who told them that there were going to be call outs scheduled; and, if they lasted only two and one-half hours, or three, Respondent would pay only for the hours worked, not four hours. The employees asked the reason that the practice of paying four hours had changed, and she explained that it was just a decision that was made by Anthony Banaszewski, Respondent's technical director and Troutman's supervisor; and if the employees did not agree with it, they should grieve it.

From then through August, employees who returned to work on a Saturday or Sunday were paid only for their actual time worked. At a meeting with Banaszewski and Troutman in mid-July, Local Lodge Vice President Michael Smith and Steward Richard Michael attempted to resolve Respondent's change of its pay practice, but Banaszewski stated that Respondent had made a management decision and that the Union should do what it had to do. On September 5, the Union filed a grievance (#02-10), requesting that Respondent return to the "established practice" of paying four hours of call out pay. Respondent's first and second step answer was that there was no requirement that an employee working "scheduled overtime" be paid for more than the actual hours worked. At the third step, on October 24, Respondent placed the Union on notice "that any alleged past practice of understanding with a supervisor that scheduled overtime is to be handled and paid as a call out" does not accord with Article V. Instead, as of that date, October 24, Respondent would administer Article V as "contain[ing] all terms and conditions for scheduled overtime and call outs for unplanned and emergency type work." This response was in accord with a memorandum concerning "Plant Overtime Policy," issued the same day by Tom Davidson, the superintendent of the compounding, white oil, cable wax, and pet/wax departments, which read, in part:

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There are two types of overtime:

1) Scheduled Overtime

- a) The employee gets paid for only the time worked.
- b) We are not to schedule "four hour call outs" and then let people go after, e.x., two hours arid pay them for four hours.
- c) You need to be able to specify and define a starting time. If you cannot predetermine a starting time, it will, by necessity, be a call-out. But, be careful with this, e.x., you may need a laboratory test result to determine how to proceed; but you may not know if the test result will be available by 7 AM or 8 AM, however it may be very reasonable to expect it to be available by 9 AM and you can schedule compounding personnel accordingly.
- d) If you schedule for four hours, e.x., and the employee completes the job in three hours you have two options:
- i) With supervisor approval arid the job is completed, the employee can leave after three hours (and get paid for three hours).
- ii) Or, in good faith, you can offer another one hour of work such as clean up to finish the scheduled time (and get paid four hours). But, the employee <u>must work</u> the full scheduled overtime in order <u>to be paid</u> the full scheduled overtime.
- e) Follow paragraph 24 in the LL 2430 contract when scheduling overtime.

2) Call Outs

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a) Paragraph 31 in the LL 2430 contract defines a call out as

"Any employee who has left the Company's premises arid who is called back to work after the end of his/her regular shift......."

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In other words, the employee has left the plant premises and did riot expect to return to work until his/her next regular scheduled shift. An employee that is called out is paid a minimum of four hours of pay at the appropriate overtime rate. This applies to unexpected or unanticipated emergency work. Call outs aren't prescheduled. Situation 1e above would be the exception to this definition.

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My understanding is that the Compounding areas have been "scheduling call outs" on weekends which is incorrect. You must follow the above guidelines.

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From that time, Respondent has consistently taken the position that call outs apply only to unplanned and emergency work; and, until the end of 2002, it paid its employees for weekend work only for the time that they worked.

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Prior to June 20, Respondent paid call out pay, which by definition is four hours' pay, at the overtime rate, for less than four hours' work, in numerous situations. For many years, Respondent required its employees to attend various training sessions, including fire training, and paid the employees for four hours, despite the fact that the training took less time. Rapp, a tank car cleaner and tank wagon loader in the shipping department, was prescheduled to work on a Saturday about 10 times, typically loading a truck for shipment to a customer. He usually worked two hours, but was paid for four. Michael regularly came to the laboratory twice a month on Saturday mornings to conduct a petrolatum test for pet blends to test their consistency. The

test normally took a minimum of two hours to approximately three hours, for which he was paid for four hours. Shipments from the storage tank in the compounding areas had to be heated in advance with steam, a job that took anywhere from 15 minutes to an hour at the most, for which the employees were paid four hours call out.

What all these situations have in common is that they involve work that had to be accomplished when Respondent asked the employees to work. Thus, Respondent had a shipment of packages to make on a certain day, and the truck had to loaded. Or Respondent had a shipment of one of its products that required the storage tank to be heated in advance. The point being, the work was scheduled for a day, not part of the regular workweek, because Respondent needed it to be performed that day, and it could not (or, at least, Respondent so determined) be performed during the regular workweek. The overtime work was not covered under paragraph 31, quoted above, because the overtime was scheduled during the week. The employees had not "left" the premises when the assignment was made. In any event, the employees had to interrupt their weekends to come to work, instead of being with their families and friends and engaging in recreation, and were to be paid for their troubles.

Approximately at the beginning of 2003, Troutman started assigning the associates four hours on the Saturday, adding to the consistency testing, previously regularly performed in the laboratory, bottle washing and sometimes changing oils in the bath or anything else to fill up the four hours for which Respondent was obligated to pay. That was consistent with paragraph 1(d)(1) of Davidson's memorandum. In October, the employees in the compounding areas, consistent with the last paragraph of Davidson's memorandum, were advised by their foreman that there would be no more scheduled overtime. The employees, instead of turning on the heat on their days off, turned on the heat as their first task in the morning and left the heated tanks for further overseeing by the night supervisor. The few jobs on the weekend were paid just for the time worked. Allen Bartoe, who had previously performed the weekend work, for which call out pay was paid, had enough seniority that he could and did decline to do this work, now that it was paid for the actual time worked, which was so little.

Respondent's refusal to pay four hours' pay for less than four hours' work changed the way that Respondent previously recompensed its employees for these jobs. Respondent's addition of make-work, such as cleaning up, which had always been available, also was a change, first, because Respondent had never filled in "make work" before to complete a four-hour stretch of work, and, second, because Respondent did not show its necessity that the make-work be performed that day, the day that the employees would normally have time for rest and relaxation. Respondent contends that it had the right to schedule an employee for Saturday or Sunday work for any hours of its choosing because it had done so before. That is accurate only to the extent that certain employees were required to come in for a full day's work; but that was only to cover a shift in an employee's absence for vacations or illness or, in the maintenance department, where employees were regularly scheduled to work 8 or 10 hours on a Saturday. Other than those examples, Respondent did not show one instance that it scheduled employees to work less than eight hours. Rather, its consistent practice was to schedule employees to perform tasks, for which it would pay a minimum of four hours, or, if the jobs took them more than four hours, would pay for the time that the tasks took.

One of Respondent's defenses rests on the contested fact that, at the meeting of June 4, its representatives made it absolutely clear that, because of the job abolishment and creation of a new job classification, there would be additional work and the new technical associates would be working overtime on the weekends. Rapp denied that weekend overtime was mentioned, except in connection with the additional training of the associates and work during the period when the associates were taking vacation. There was, no matter which of the witnesses is to be

believed, no specific discussion of call out overtime; and whether Respondent's representatives even considered the implication of their alleged statement that the employees would be working overtime is questionable. Nor was there any discussion by Respondent's representatives of the specific nature of the work that they wanted the associates to perform on the weekends. Thus, no matter whether Respondent's representatives gave notice of their intention to assign the associates overtime, the Union's representatives could not have possibly understood that they were being notified that the practice of assigning overtime was changing, at least in any meaningful way that might have required them to demand bargaining about that change.

Furthermore, I find that Respondent did not even intend to give notice of a *proposed* change which would permit the Union to bargain about it. Rather, Respondent's position was that there was no plantwide past practice, that it had the right to schedule in advance any overtime work for any amount of hours that it wanted, and that it had the right to pay its employees for only the amount of time that they worked. Indeed, in its first position statement filed with the Regional Office, Respondent alleged that it changed its system of assigning work to its technical associates not because of their increased duties, with less manpower, but because what it had done before was a mistake. Thus, it contended:

In June of 2002, higher company management discovered that one department, the laboratory testers, had for some unknown period of time been approving employees scheduled out on Saturday for four hours overtime pay even though they worked less than four hours. This practice did not exist in other units in the facility, i.e. in the hydro unit, central maintenance, shipping, boiler house, PWTP, or service pumpers. In these departments, four hours of work are scheduled and required in order to receive four hours of overtime pay. The only company approved exceptions to four hours work for four hours pay is in Pet/Wax compounding where ongoing Saturday and Sunday overtime is scheduled in four hour blocks to check and adjust tank temperatures and handle upset work conditions. This is a work requirement due to the requirement of strict tank temperature controls.

Upon discovering the practice with these testers in mid-June the Union was advised that thereafter tester employees who were scheduled for Saturday would be required to work four hours in order to receive four hours overtime pay.

In a second position statement, Respondent wrote:

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The Union claims the practice they allege was changed is not limited to the laboratory testers, but rather is common throughout the facility. Crompton denies this. There may, of course, have been isolated instances in which an individual supervisor acting on his or her own and without senior management knowledge allowed an employee who had been scheduled and not called out to leave before four hours had been worked. Isolated and unapproved instances would not a practice make. If the Union can identify a pattern in which this practice occurred outside the laboratory testers or pet/wax compounding as noted [above], particularly with knowledge and approval of senior management, we would be glad to review it. The burden is, however, on the Union to provide evidence that its position is factually correct.

This position, that the practice in the laboratory was a mistake which was corrected, was reflected in Respondent's original answer, in which it admitted:

that about June 20, 2002, Respondent discovered that a supervisor in its laboratory had been misapplying the Collective Bargaining Agreement with respect to payment of employees who were prescheduled to work on the weekend. It advised the Union that it would thereafter comply with the Collective Bargaining Agreement, and corrected the unauthorized practice. Except to this extent, it is denied that on or about June 20, 2002, Respondent changed the existing call out practice by changing the way employees are paid when returning to work after their regularly scheduled shift.

It was only after a conference call with the parties, at which I expressed my skepticism about Respondent's legal defense of a "mistake," in light of the General Counsel's and Union's contention that there had been a practice for 40 years, that Respondent, on the day before the hearing, amended the same portion of its answer to allege:

It is admitted that following the combination of the lab tester, sample room attendant, and bottle washer positions into the position of technical associate, Respondent negotiated with the Union the fact that the new position would be required to work four hours a day in order to receive four hours pay on Saturday scheduled overtime. Except to this extent, it is denied that on or about June 20, 2002, Respondent changed the existing call out practice by changing the way employees are paid when returning to work after their regularly scheduled shift.

This radical shift of Respondent's factual position, while it is in harmony with the testimony of its own witnesses, is not in accord with the testimony of the General Counsel's witnesses, who basically stated that nothing was announced at the June 4 meeting pertaining to the call out issue and that the first mention of Respondent's change of its prior practice was by Troutman on June 20, under orders of Banaszewski. That complies, essentially, with Respondent's first position statement, albeit that Troutman said nothing about a "mistake," but merely changed the practice; and I credit the General Counsel's witnesses and discredit those of Respondent.

The duty to bargain in good faith, protected under Section 8(a)(5) of the Act, is defined by Section 8(d) as the duty "to meet . . . and confer in good faith with respect to wages, hours, and other terms and conditions of employment." "[A]n employer's unilateral change in conditions of employment . . . is . . . a violation of § 8(a)(5), for it is a circumvention of the duty to negotiate "NLRB v. Katz, 369 U.S. 736, 743 (1962). The proscription against unilateral action applies not only to mandatory bargaining subjects that are specifically covered in a contract, but also to changes of benefits, such as overtime payments and conditions, that have "been 'satisfactorily established' by practice or custom." Golden State Warriors, 334 NLRB No. 96, slip op. at 2 (2001); Dow Jones & Co., 318 NLRB 574, 576 (1995), enfd. mem. 100 F.3d 950 (4th Cir. 1996); Exxon Shipping Co., 291 NLRB 489, 493 (1988).

As found above, what Respondent stated to the Union on June 4 did not suggest that it intended to change its call out pay past practice. Nor do I find, as Respondent contends, any offer by it to bargain about these changes. There was no offer to the Union. There was no announcement to the Union of a *proposed* change. There was merely the June 20 statement by Troutman to employees of the laboratory, at a regular weekly meeting, that the past practice had changed and that employees would be paid only for the number of hours that they worked. That the employees present included the Union's treasurer and a steward does not release Respondent from its obligation of giving notice to the collective-bargaining representative.

Even assuming that the departmental meeting constituted appropriate notice to the Union, all that was stated at the meeting was that the change had been effectuated. The Union was, accordingly, not required to bargain about what was effectively a *fait accompli*. There was nothing, in truth, to bargain about. "[T]he Union was not required to request bargaining in order to preserve its rights under the Act." *Dow Jones & Co.*, 318 NLRB at 577. Nor could there have been a waiver by the Union, which will not be found in the absence of clear notice of an intended change. *Sykel Enterprises*, 324 NLRB 1123 (1997). Here, the change was not *intended*, but *effectuated*. Later discussions held in an attempt to resolve the grievance, while they might have ultimately resolved the issue, were held in the context of the practice already having been changed and the Union attempting to recoup what it had already lost. Rather, the past practice should have been reinstated first, in order for appropriate bargaining to occur.

Finally, Respondent contends that during the processing of grievance #02–10, the Union requested consistency; Davidson's October 24 memorandum was generated as a result of that request; and the Union should not be heard to complain. Respondent's position is disingenuous. The Union never wavered from its position that there was a past practice that required the employees to be paid their guarantee of four hours' pay and that they should not be given additional tasks as make-work. Any request by the Union that there be consistency was aimed at Respondent's continuing its past practice throughout its facility, not abolishing its practice.

For all these reasons, I conclude that Respondent's unilateral change violated Section 8(a)(5) and (1) of the Act. I turn to the complaint's additional alleged violation. On November 20 and 21, the Union filed two additional grievances (#02–15 and #02–16) complaining of Respondent's refusal to pay four hours' pay for each call out by insisting that the collective-bargaining agreement defined call out as "emergency work" and that preplanned and scheduled work is not emergency or unplanned work. Grievance #02–16 specifically alleged that Respondent's position violated a "long established practice of over 40 years." By letter dated November 22, Todd Fichera, the Union's business representative, requested that Respondent supply all its payroll and time card records for the two years prior to September 6, the date that it filed grievance #02–10, of any bargaining-unit employee who worked a sixth day, or his first day off, of less than four hours and received pay for four hours. That would show, the General Counsel contends, the past practice which is the subject of this proceeding.

John Jackson, Respondent's human resources manager, wrote to Fichera on December 20, taking issue with the Union's pursuit of grievance #02–10 which, Respondent contended, was time barred under the contract. (The collective-bargaining agreement required the Union to file for arbitration within two working days after its next regular meeting. The Union, instead, filed the unfair labor practice charge which is the basis of this proceeding and notified Respondent that it reserved the right to proceed to arbitration at a later date pending the outcome of its charge.) Jackson, however, did not reply to the demand for information. On January 9, 2003, Fichera repeated his request for the documents he had asked for in November, adding a request for all documents that Respondent intended to present as evidence in connection with grievances #02–15 and #02–16. Jackson replied on January 21, 2003, making the documents available for inspection and copying.

The General Counsel contends that, although Respondent ultimately complied with the Union's request, it did so too late. At the hearing, Respondent presented no cogent reason for ignoring the Union's November 22 request. Its reliance on its defense to grievance #02–10 ignores the fact that, within the previous two days, the Union had complained of the very same conduct for which the requested documents were needed. The Union's failure to take the earlier grievance to arbitration, even if untimely, did not dispose of the issue of Respondent's failure to abide by its past practice.

On the other hand, Respondent contends in its brief that "[i]nformation requested to act as a substitute for discovery in Board proceedings is not relevant." That is not precisely accurate. Board procedures do not include pretrial discovery, and the Board will generally not find a violation of Section 8(a)(5) when an otherwise genuine demand for information is used to obtain information which is not available under Board procedures. *Pepsi-Cola Bottling Co.*, 315 NLRB 882, enfd. in relevant part 96 F.3d 1439 (4th Cir. 1996); *Union-Tribune Publishing Co.*, 307 NLRB 25, 26 (1992); *WXON-TV*, 289 NLRB 615, 617-618 (1988).

Here, the Union filed its first grievance (#02–10) on September 5. After the third step, it determined not to proceed to arbitration but instead to file an unfair labor practice charge, which it did on November 4. It then filed two additional grievances on November 20 and 21 and then made its demand for information. When asked for his need for the requested information, Fichera testified that he needed to establish the past practice of Respondent's payment of four hours' pay for less time worked for both the "grievance procedure and the Board hearing." In this circumstance, it appears clear that the Union made its demand for information as discovery for this proceeding, which was otherwise unavailable. I will dismiss this allegation.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find 20 that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, Respondent shall restore the pre-June 20 call out pay practice and assignment of overtime and make whole, with interest, any bargaining-unit employees for any loss they may have suffered as a result of the unilateral discontinuation of the call out pay practice, to wit, paying employees only for their time worked, when the 25 employees worked less than four hours, rather than the guaranteed four hours of pay at the overtime rate, as prescribed in Ogle Protection Service, 183 NLRB 682 (1970), plus interest as computed in New Horizons for the Retarded, 283 NLRB 1173 (1987). Respondent shall also notify and, on request, bargain with the Union in good faith to agreement or impasse regarding any changes in the call out pay practice or its practice of assigning of Saturday and Sunday 30 work. Respondent clearly has the right to switch some of its previously assigned overtime functions to the regular workweek. It does not have the right, without bargaining, to add makework to overtime work.

On these findings of fact and conclusions of law and on the entire record,² including my review of the briefs filed by the General Counsel and the Union and my observation of the witnesses as they testified, I issue the following recommended³

ORDER

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Respondent Crompton Corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with District Lodge 83, Local Lodge 2430, International Association of Machinists and Aerospace Workers, AFL-CIO (Union) as the

² The General Counsel unopposed motion to correct the Transcript is granted.

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

exclusive representative of the employees in the appropriate unit, as that unit is set forth in its collective-bargaining agreement with the Union, dated April 26, 2002, by unilaterally changing its past practice concerning call out pay and assignment of overtime without providing the Union an adequate opportunity to bargain about the matter.

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(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the National Labor Relations Act.

(a) Restore its past practice concerning call out pay and assignment of overtime and give the Union written notification that this has been done.

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(b) Notify the Union and, on its request, bargain in good faith to agreement or to impasse prior to changing its past practice concerning call out pay and assignment of overtime.

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(c) Make its employees whole for any loss of earnings and other benefits suffered as a result of the change of its past practice concerning call out pay, in the manner set forth in the remedy section of the decision.

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(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

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(e) Within 14 days after service by the Region, post at its facility in Petrolia, Pennsylvania, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since June 20, 2002.

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(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

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⁴ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

5	Dated, Washington, D.C.	May 28, 2003	
10			Benjamin Schlesinger Administrative Law Judge
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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union Choose representatives to bargain with us on your behalf Act together with other employees for your benefit and protection Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain collectively with District Lodge 83, Local Lodge 2430, International Association of Machinists and Aerospace Workers, AFL-CIO (Union) as the exclusive representative of the employees in the appropriate unit, as that unit is set forth in our collective-bargaining agreement with the Union, dated April 26, 2002, by unilaterally changing our past practice concerning call out pay and assignment of overtime without providing the Union an adequate opportunity to bargain about the matter.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL restore our past practice concerning call out pay and assignment of overtime and give the Union written notification that this has been done.

WE WILL notify the Union and, on its request, bargain in good faith to agreement or to impasse prior to changing our past practice concerning call out pay and assignment of overtime.

WE WILL make our employees whole for any loss of earnings and other benefits suffered as a result of the change of its past practice concerning call out pay, with interest.

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1000 Liberty Avenue, Federal Building, Room 1501, Pittsburgh, PA 15222-4173

(412) 395-4400, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (412) 395-6899.